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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,967	10/06/2003	Benjamin D. Buster	16412/94518-02	4757

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EXAMINER

ARYANPOUR, MITRA

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 10/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/679,967	Applicant(s) BUSTER ET AL.	
	Examiner Mitra Aryanpour	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2003.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☒ Claim(s) 18 and 19 is/are allowed.
 6) ☒ Claim(s) 1-3,5-10,12,13,15-17 and 20 is/are rejected.
 7) ☒ Claim(s) 4,11 and 14 is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>06 October 2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 20 is rejected under 35 U.S.C. 102(e) as being anticipated by Lamb (6,579,195).

Regarding claim 20, Lamb shows a batter training apparatus comprising: a U-shaped ground frame section (frame structure 12), a forward motion restraint (forward frame member 22) attached to said ground frame section (frame structure 12), said forward motion restraint including a vertical member (T-joint 36) extending from said ground frame section and being less than approximately 2.5 feet in height and a substantially elongated horizontal member (forward frame member 22) extending from said vertical member and being at least 1 foot in length; a ball support (batting tee 32) positioned adjacent said ground game (see figure 1).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3711

4. Claims 1-3, 5-10, 12, 13, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hermo (3,815,906) in view of Skyhawk (3,627,319).

Regarding claim 1, Hermo shows a batter training apparatus comprising: a ground frame section (base portion 12); a forward motion restraint (frame 22) attached to said ground frame section (base portion 12), said forward motion restraint including a vertical member (support beam) extending from said ground frame section and a horizontal member (rigid side rod 26) extending from said vertical member (see figures 1 and 2). Hermo does not disclose expressly the use of a ball launcher and a trigger mechanism for activating the ball launcher. As it is readily apparent, the training apparatus of Hermo is provided with some form of ball delivery system such as a pitcher, a tee or a pitching device. There are many different types of tees and pitching devices available on the market, and to utilize one that has an activation means for launching a ball is considered an obvious matter of training choice. Skyhawk shows such a device. Skyhawk shows a ball launcher that is activated by the foot of the batter (see figures 5 and 6), therefore, eliminating the need from others. It would have been obvious in view of Skyhawk to have provided an automatic ball launcher for use with the training apparatus of Hermo, the motivation being so the batter is able to train without the aid of another person.

Regarding claim 2, Hermo shows the vertical member and the horizontal member are attached at substantially right angles to one another (see figure 2).

Regarding claim 3, Hermo does not disclose expressly the use of two vertical members. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to utilize two vertical members, because Applicant has not disclosed that utilizing two vertical members, provides an advantage, is used for a particular

Art Unit: 3711

purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the vertical member taught by Herno or the two claimed vertical members because both vertical members perform the same function of providing support for the training device. Therefore, it would have been an obvious matter of design choice to modify Herno to obtain the invention as specified in claim 3.

Regarding claim 5, as best seen from figure 1, Herno shows vertical member(s) are less than approximately 2.5 feet in height (below the knee of the user).

Regarding claims 6 and 7, Herno as modified above further includes a pivotally mounted foot plate (the broadest reasonable interpretation of foot plate would include the upwardly arched treadle 92) attached to said ground frame section. With regards to the foot plate being attached to the ground frame, it is readily apparent that the foot plate can be positioned over the bracing means (18).

Regarding claims 8, Herno as modified above shows the ball launcher can be attached to the ground frame section by placing the foot positioning member (92) on the bracing means (18).

Regarding claim 9, Herno as modified above additionally shows the trigger is operatively connected to a foot plate (see figure 6).

Regarding claim 10, Herno shows said vertical member (retaining member 28) is pivotally mounted (the broadest reasonable interpretation of pivotally would include the sliding movement of the retaining member 28) on said ground frame section and said horizontal member forms a substantially perpendicular angle with said vertical member (see figures 1 and 2).

Art Unit: 3711

Regarding claim 12, Hermo as modified above, readily shows that the position of the ball launcher can be readily adjust with respect to the ground frame section (it can be placed at any desired position).

Regarding claim 13, Hermo shows that the training device can be used by left-handed or a right-handed batter (see column 4, lines 4-12). Skyhawk shows that the ball launcher can be placed at any desired position.

Regarding claim 15, Hermo shows said ground frame section is generally U-shaped (see figures 1 and 3).

Regarding claim 17, Hermo shows the forward motion restraint is adjustable (it is horizontally adjustable) such that it will press against a user's lead leg about said user's shin.

5. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1, and further in view of De Pippo (5,395,107).

Regarding claim 16, Hermo does not disclose expressly the specific type of bat that can be used in combination with the training apparatus. De Pippo shows an attachment for a training bat, wherein the attachment comprising: a support tube (see figure 2) having a diameter approximate to that of a bat at said bat's striking surface; and three substantially flat striking surfaces (vanes 16) connected to and surrounding said support tube, thereby forming a triangular structure around said support tube (see figures 1 and 2). In view of De Pippo it would have been obvious to attach vanes to the baseball bat of Hermo, the motivation being to develop strength and coordination for a person's swing when swinging a sporting implement, such as a baseball bat.

Art Unit: 3711

Allowable Subject Matter

6. Claims 18 and 19 are allowed.
7. Claims 4, 11, 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mitra Aryanpour whose telephone number is 703-308-3550. The examiner can normally be reached on Monday - Friday 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 703-308-1513. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MA
12 October 2004


MITRA ARYANPOUR
PATENT EXAMINER